

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4874 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

CHINUBHAI S PATEL

Versus

STATE OF GUJARAT

Appearance:

NANAVATI & NANAVATI for Petitioner
Ms MANISHAL LAVKUMAR, AGP i/b M/S MG DOSHIT & CO
for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/08/1999

ORAL JUDGEMENT

The original petitioner has expired and,
therefore, his heirs have been brought on record. The
original petitioner is hereinafter referred to as "the
petitioner".

2. In this petition under Article 226 of the
Constitution, the petitioner has prayed for a direction

to the respondents to treat the petitioner as having been promoted to the post of Office Superintendent and for all consequential benefits.

3. The petitioner was originally employed as a Clerk in the Civil Supplies Department of the then State of Bombay in the year 1945. The petitioner was thereafter absorbed in the Public Works Department as a Junior Clerk in 1954 and was promoted as Senior Clerk in February, 1956. The petitioner was promoted as Senior Accounts Clerk with effect from 27.10.1970. In the year 1975, the petitioner's name was recommended to the Accountant General's Office and the petitioner was appointed as unqualified Divisional Accountant vide order dated 16.6.1971 issued by the Accountant General, Gujarat State, Ahmedabad - 1. The petitioner thereafter passed the departmental examination and became qualified for the post of Divisional Accountant. The Divisional Accountants are under the Accountant General but they are being posted in various offices under the State Government.

The petitioner retired from service on reaching the age of superannuation on 30.9.1982, while the petitioner was working on deputation under the Gujarat Housing Board. In the meantime from December, 1981 onwards, the petitioner started making representations to the State Government requesting for the petitioner's proforma promotion to the post of Office Superintendent in the parent department. The State Government declined and rejected the representations as per communication dated 19.3.1985 at Annexure "F" informing the petitioner that the petitioner was appointed as a Divisional Accountant under the Accountant General with the petitioner's consent and the petitioner retired as a Divisional Accountant after putting in 11 years service. Hence, there was no question of giving the petitioner proforma promotion in the State Government service.

It is the aforesaid order which is challenged in the present petition. The petitioner has also challenged the Government Resolution dated 30.1.1981 at Annexure "A" to the petition which has reference to deputation allowance.

4. At the hearing of this petition, the learned counsel for the petitioner has submitted that even at the time of his retirement, the petitioner was in the State service and in support of the said contention reliance is placed on the seniority list of Clerks in State Government service (Roads & Building Department) as on

31.3.1979 (Annexure "C"). In the said list, the petitioner's name is mentioned at Sr.No. 9 with the endorsement "working as Divisional Accountant" in the remarks column. It is submitted that the persons junior to the petitioners in the aforesaid seniority list were promoted as Office Superintendents before the petitioner retired in September, 1982 and, therefore, the petitioner was entitled to get proforma promotion to the post of Office Superintendent. The learned counsel for the petitioner has further pointed out from the memo of the petition that J.P. Somani (Sr.No. 96) and L.B. Jadav (Sr.No. 109) in the said list who were admittedly junior to the petitioner were promoted as Office Superintendents and reliance is also placed on the order dated 7.7.1981 (Annexure "D") whereby J.P. Somani and L.B. Jadav were promoted as Office Superintendents.

5. On the other hand, Ms Manisha Lavkumar, learned AGP has submitted that the post of Divisional Accountant is not a part of the State Government service but is a part of the Central Government service under the Accountant General. It is stated that as per Rules for the post of Divisional Accountants (Annexure III-Pg. 40) contained in Chapter VII of the Comptroller and Auditor General's Manual of Standing Orders there are three sources for recruitment to the post of Divisional Accountant - (i) PWD Accounts Clerks, (ii) Upper Division Clerks of the Audit Office and (iii) Direct Recruits. Clerks recruited as per source Nos. 1 and 2 who pass the Divisional Test Examination are placed on a waiting list, but are allowed to retain their lien on their substantive appointments till they are confirmed in the Divisional Accountants' cadre and their relative seniority will be determined with reference to the date of their passing the Divisional Test Examination. The learned AGP has further pointed out from the affidavit in reply that for making recruitment from amongst PWD Accounts Clerks the confidential records of such Accounts Clerks are called for by the Accountant General and Accountant General after considering such records make the selection. The selected Account Clerks are then offered the posts of Divisional Accountant and they become qualified Divisional Accountants after they pass the requisite examination. There is no compulsion for Accounts Clerks to accept the post offered to them by the Accountant General. Such an Accounts Clerk on becoming a qualified Divisional Accountant severs all connections with the State Government. It is further submitted that the petitioner had willingly accepted the post of Divisional Accountant offered to him on 15.6.1971. The petitioner also appeared at the test conducted by the Accountant

General and became qualified Divisional Accountant.

6. Having heard the learned counsel for the parties, it appears to the Court that there is no substance in the petitioner's contention that the petitioner was an employee of the State Government on the date of his retirement with effect from 30.9.1982. It is true that initially when the petitioner was appointed as an unqualified Divisional Accountant on 15.6.1971, the petitioner retained his lien in the parent department and, therefore, his name was included in the seniority list of the Clerks in the parent department as on 31.3.1979. The petitioner has not given the date on which the petitioner passed the Divisional Accountant Examination, but it appears that the petitioner might have passed the examination after 31.3.1979 and, therefore, till that date the petitioner was continued in the seniority list of Clerks in the parent department. Hence, the petitioner after having been treated as a qualified Divisional Accountant did not retain his lien in the parent department.

7. As regards promotion given to J.P. Soman and L.B. Jadav who were shown junior to the petitioner in the aforesaid seniority list, it is true that they were promoted to the post of Office Superintendent in the year 1981 as per the State Government order dated 7.7.1981 (Annexure "D") but once the petitioner ceased to have a lien in the parent department, the petitioner had no right to claim any proforma promotion even if his juniors in the erstwhile parent department were given any promotion. It is not the petitioner's case that on 7.7.1981 when the juniors were promoted, the petitioner was not a qualified Divisional Accountant. So also it is not shown that J.P. Soman and L.B. Jadav were unqualified Divisional Accountants under the Accountant General. The reference made by the petitioner to R.C. Shah in para 4 of the rejoinder affidavit has also no relevance as it is not the petitioner's case that R.C. Shah was a Divisional Accountant nor is it shown that R.C. Shah was promoted as Office Superintendent while working as an unqualified Division Accountant during the period when the petitioner was also unqualified Divisional Accountant.

8. In view of the material on record, it is not possible to accept the petitioner's contention that the petitioner was entitled to get any proforma promotion to the post of Office Superintendent in the State Government service.

In view of the aforesaid discussion, the petition
is dismissed. Rule is discharged with no order as to
costs.

August 19, 1999 (M.S. Shah, J.)

sundar/-